

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED ; 15-6-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD Nos.658 and 659 of 2006
and
CMP No.5289 of 2006

K.Sridharan ... Petitioner in
both revisions/Appellant/Respondent

vs

Vasanthi ... Respondent in
both revisions/Respondent/Petitioner

Civil revision petitions filed under Sec.25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 15.2.2006 made in R.C.A.Nos.1340 and 1361 of 2003 on the file of the VII Judge, Court of Small Causes, Chennai confirming the fair and decreetal order dated 19.9.2003 passed by the XIII Small Causes Court in RCOP Nos.2163/2002 and 42/2003.respectively

For Petitioner : Mr.M.Kamalanathan
For Respondent : Mr.P.Chandrasekar

ORDER

This order shall govern the above two revisions filed at the instance of the tenant-revision petitioner.

2.The Court heard the learned Counsel for the petitioner and also for the respondent.

3.The respondent-landlady filed RCOP No.2163/2002 for an order of eviction on the grounds of willful default and personal occupation alleging that there was a willful default in payment of rental from January 1997 onwards till the date of the application; and that the property is also required for personal occupation of the landlady. While the matter stood thus, the tenant filed the other RCOP No.42/2003 under Sec.8(5) of the Act for making deposit of the rental. On enquiry, the Rent Controller allowed the RCOP filed by the landlady accepting the ground of willful default, though declined to accept the other ground, and also dismissed the RCOP filed by the tenant. Challenging the said orders, the tenant took two RCAs referred to above, in RCA Nos.1340 and 1361 of 2003 respectively. Both the RCAs were taken up for enquiry by the VII Judge, Court of Small Causes. Both ended in dismissal. Aggrieved over the same, these revisions have been brought forth by the tenant.

4. After hearing both sides, the following facts are found admitted. Originally, the revision petitioner-tenant took the property on lease in the year 1976 from the husband of the landlady and continued to be a tenant by making originally a payment of monthly rental of Rs.35/-, and it was increased to Rs.350/-. Thereafter, it was raised to Rs.400/- after the demise of the original landlord. The property came to the hands of the wife, the present landlady. At this juncture, the landlady stating that there was a rental arrears from January 1997 till the filing of the application before the Rent Controller, and also it is required for personal occupation, filed the said petition. The defence plea was that the landlady was receiving rental all along the period, but issued receipts till January 1997; that thereafter, no receipts were issued, though rental was paid and received; that under the circumstances, the tenant issued a notice and filed the application for depositing the rental into Court, and hence, there was no rental arrears at all; that the ground of personal occupation put forth, was nothing but lack of bonafide; that it was intended only to evict the petitioner-tenant, and under the circumstances, the RCOP filed by the landlady, was to be dismissed, and he should be permitted to deposit the rental. The Rent Controller was not prepared to accept the defence plea and allowed the application for eviction on the ground of willful default. Consequently, the application filed by the tenant for deposit of rental, was dismissed. Both the RCAs filed by the tenant, were also dismissed by the appellate forum. Hence, these revisions before this Court.

5. Advancing the arguments on behalf of the petitioner, the learned Counsel would submit that in the instant case, it is an admitted fact that he has been a tenant from 1976 onwards under the husband of the present landlady; that till the lifetime of the original landlord, the rental was paid; that it was raised to Rs.400/- from January 1997 onwards; that from the time of the death of the original landlord, payments were made to the present landlady; that she was in the habit of issuing receipts; that from January 1997, she did not give receipt; that under the circumstances, the tenant was constrained to file the application for deposit of the rental before the Court; and that the filing of the application under Sec.8(5) of the Act would reveal that when the receipt was not issued for payment of rental, the application was filed. Added further the learned Counsel that in the year 2003, a notice was served by the Corporation of Madras for payment of tax, since the payment of tax was not paid by the landlady, and under the circumstances, the tenant has made the payment of tax to the Corporation which has got to be adjusted, and hence, the revision petitions have got to be allowed accepting the case of the tenant that there was no default in payment of rental, much less willful default.

6.The Court heard the learned Counsel for the respondent on the above contentions.

7.After careful consideration of the rival submissions made, this Court is of the considered opinion that both the revisions require an order of dismissal. Admittedly, the revision petitioner-tenant is in the property from 1976. It is also his admitted case that all along the period, receipts were issued by the husband of the landlady, who was the original landlord, and after his death, the landlady was issuing receipts upto January 1997. According to him, he was making payment of rental for the periods 1998, 1999 and 2000 i.e., for more than 2 or 3 years without any receipt whatsoever. While the original landlord was giving receipts and thereafter, the present landlady was also issuing receipts for the said period, there was no reason for the tenant to tender or make payment of rental without receipt, that too for a few years. Hence, the case of the tenant that he made payment of rental during that period cannot be accepted in the absence of any proof to that effect. It is well settled proposition of law that in a given case of eviction on the ground of willful default, the contention put forth by the tenant that he used to make lump sum payment or used to make payment without receipt whatsoever, has got to be discountenanced. In the absence of proof, such contention cannot be accepted.

8.In the instant case, the crowning circumstance against the petitioner-tenant is that the RCOP proceedings were initiated in the year 2002, and thereafter, the RCAs were also pending, one from the eviction application and the other from application for depositing rental. While the matter stood thus, the tenant comes forward to state that there was compulsion from the Corporation of Madras for payment of tax, and under the circumstances, he directly made payment of tax to the Corporation. Thus, it would be indicative of the fact that the tenant has complicated the matter. Though there was a notice served upon the tenant, under the circumstances, he was expected to get permission from the Court where the proceedings were pending. Without doing so, he has directly made payment, that too in a case where he has filed an application for deposit of rental. All would go to show that here is a case of not only default, but also willful default noticed. Under the circumstances, both the authorities below were perfectly correct in rejecting the case of the tenant and passing an order of eviction. Hence, it has got to be sustained. Consequently, the application filed by the tenant for deposit of rental can only come to an end by a dismissal order.

9.In the result, both these civil revision petitions are dismissed. It is brought to the notice of the Court that the tenant is a person who is occupying the premises for nearly 30 years. Under the circumstances, reasonable time has got to be

given. Accordingly, 9 (nine) months' time is granted for vacating and handing over possession to the landlady. No costs. Consequently, connected CMP is also dismissed.
Nsv/

Sd/
Asst.Registrar

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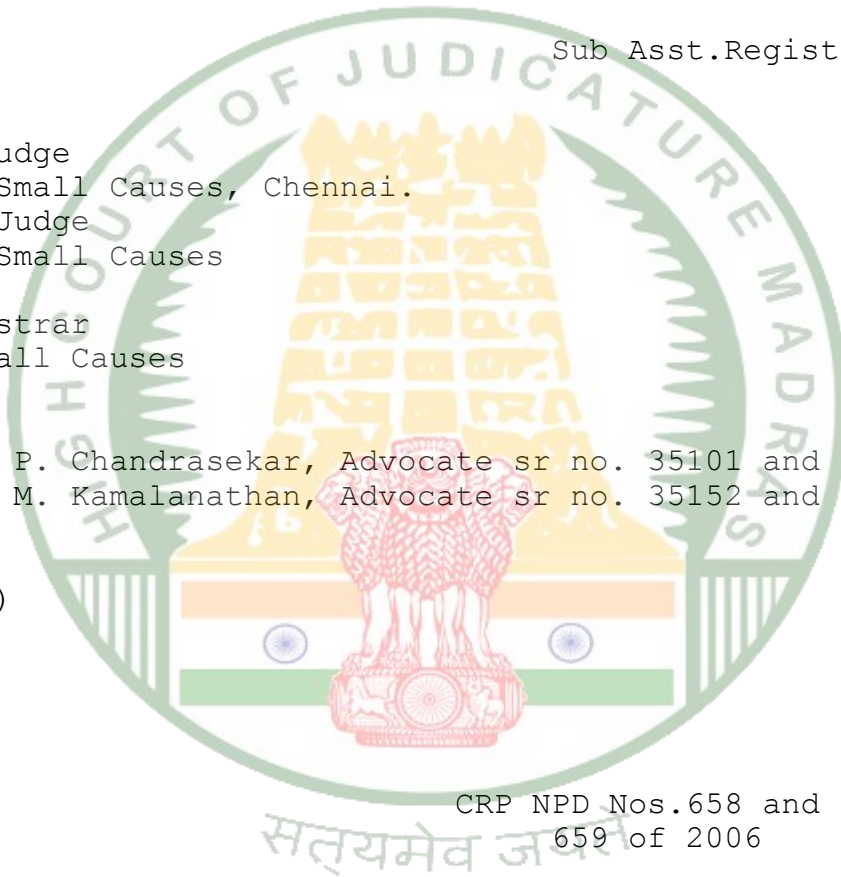
Sub Asst.Registrar

To:

- 1.The VII Judge
Court of Small Causes, Chennai.
- 2.The XIII Judge
Court of Small Causes
Chennai.
3. The Registrar
Court of Small Causes
Chennai

+2cc to Mr. P. Chandrasekar, Advocate sr no. 35101 and 35102
+2cc to Mr. M. Kamalanathan, Advocate sr no. 35152 and 35153

NG(CO)
NM(07.08.07)



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659 of 2006

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